IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.9/2005

Babulal Mohd. Shaikh ... Petitioner

Versus

Chandbee alias Chndubai B.Shaikh

& Anr. .... Respdts.

Shri Ramesh Dube Patil i/b M/s Jay & Company for the Petitioner.

Ms.Amina Iqbal for the respdts.

CORAM: S.B.MHASE &

S.R.SATHE,JJ.

DATE : 12TH JULY 2005.

PC:

1. Heard both sides. Family Court No.2 at Pune has granted maintenance at the rate of Rs.1000/- per month from 13/12/2003 in favour of respondent in Application No. 8/2004. The said order is challenged before this Court. It was a

proceeding u/s 125 of Criminal Procedure Code and the parties to the proceeding are Muslim. The respondent/wife was aged about 54 years at the time of filing of the application, while the husband/Revision Petitioner was aged about 57 years. The respondent/husband has not given 'Talaq'. Out of wedlock they have two children. However, she maintained the children and performed their marriages. The respondent/wife claims that since last two years she is not being looked after by her husband and therefore, Petition for maintenance was filed. It is revealed from para 15 of the Judgement that the Petitioner admitted that he used to give money to children. It is further admitted that he has not provided money for her expenditure and thus the trial court has recorded finding, that since last two years the Revision Petitioner/husband has failed to provide maintenance to respondent/wife and thus has passed order. Thus, we find that finding of negligence on the part of husband is rightly recorded. Learned counsel for the Revision Petitioner submitted that the age of the Revision Petitioner is 65 years and

he has no capacity to work. He submitted that the Revision Petitioner was a vegetable vendor but due to old age he is not carrying out the said business and he has no earning source. Simply the age is not a factor which incapacitates a person. Therefore, it is necessary for the Revision Petitioner to establish, by leading appropriate evidence, that he has no physical capacity, which itself is not a factor to conclude that the Revision Petitioner has no earning capacity and no evidence on that fact has been brought on record. Apart from that, it has been brought on record that the Revision Petitioner is possessed of 15/16 acres of land at Parner in Ahmednagar District. Learned counsel for Revision Petitioner submitted that the said land is located in draught prone area and the Revision Petitioner is not getting any income. In order to substantiate this submission, no evidence has been brought on record. 7/12 extracts were not produced to show what type of crop is taken in the said land and as to whether that said land is irrigated one and non irrigated. It could have been also pointed out that the said land is fallow.

However, no such evidence is produced on record. On the contrary the fact that he is possessed of 15/16 acres of land is a factor which shows that he is having capacity to pay the maintenance. Under these circumstances we find that the Family Court has rightly decided the matter and fixed the quantum of maintenance . No perversity in the findings has been pointed out. No question of law was argued except the above referred submission,therefore, no interference is required by this Court. The Revision Petition is hereby dismissed.

(S.R.SATHE) **(S.B.MHASE)**